

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

B-213227.2

**FILE:**

**DATE:** June 25, 1984

Trellclean, U.S.A., Inc.

**MATTER OF:**

**DIGEST:**

1. Where protester first learns of specific grounds of protest concerning the evaluation of its proposal at agency debriefing, protest was not required to be filed prior to debriefing.
2. Allegation that agency changed specifications in evaluating equipment proposed by protester is denied. Record indicates that agency evaluation was in conformance with specifications and mere fact that the protester disagrees with agency conclusions provides no basis to find that it was not done in accordance with the provisions of the RFP.
3. Allegation that agency evaluation of protester's response to sample task requirement of RFP was arbitrary and capricious is denied where reasonable basis exists for evaluation.
4. It is not the function of GAO to rescore technical proposals. Mere disagreement by protester concerning the scoring of its proposal does not establish that the evaluation had no reasonable basis.
5. Meaningful discussions were held where contracting agency identified those areas in protester's proposal which it considered deficient and gave protester the opportunity to correct those deficiencies. Context and extent of discussions are matters primarily for determination by the contracting agency. All that is required is that the agency lead offerors into areas of their proposals which require amplification.
6. Allegation that awardee's proposal should have been downgraded because of poor safety record is denied where agency had sufficient basis to conclude that awardee's safety record was excellent.

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Trellclean U.S.A., Inc. (Trellclean), protests the award of a contract to Seaward Marine Services, Inc. (Seaward), under request for proposals (RFP) No. N00024-83-R-4290(S) issued by the Naval Sea Systems Command (Navy) for ships' underwater hull-cleaning services. Trellclean also requests proposal preparation costs.

We deny the protest and claim.

The RFP was issued on March 11, 1983, as a total small business set-aside, with April 28, 1983, as the closing date for receipt of proposals. Offerors were permitted to submit proposals for either or both of two geographic zones: Zone A-East Coast and Zone B-West Coast. Five technical proposals were received. Three contained offers for both zones and two were offers for zone "B" only.

A Navy Technical Evaluation Review Panel (TERP) composed of Navy diving and salvage experts reviewed the proposals. Requests for clarifications of proposals were mailed on May 24, 1983, with a response date of June 13, 1983. Thereafter, a competitive range, consisting of all five offerors, was established. Discussions were conducted and best and final offers were due by July 28, 1983.

On September 16, all offerors were notified that the Navy intended to award Seaward a contract for both zone "A" and zone "B." Trellclean filed a protest with the contracting officer alleging that the TERP did not understand Trellclean's hull-cleaning machines and system and that Trellclean should have been allowed to demonstrate its proposal. On September 30, Industrial Divers, Inc. (Industrial), another offeror, filed a protest with our Office (B-213227). The contracting officer denied Trellclean's protest by letter dated October 25, 1983. By letter dated November 28, 1983, Industrial's protest was withdrawn. On December 8, the Navy awarded a 1-year contract to Seaward with two additional 1-year options. Trellclean subsequently protested to our Office by letter dated December 28, 1983.

#### Timeliness

Initially, the Navy argues that Trellclean's protest is untimely since it was not filed within 10 days of the denial of its protest by the contracting officer. However, it is well settled that a protester may delay the filing of its protest until after a debriefing when the information available earlier left uncertain whether there was any

basis for protest. See Philips Information Systems, Inc., B-208066, December 6, 1983, 82-2 CPD 506; Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423. The contracting officer's letter denying Trelldclean's protest merely stated the Navy's position that it evaluated Trelldclean's proposal properly. The deficiencies in Trelldclean's proposal were not specified. After being notified of the contract award to Seaward, Trelldclean diligently requested a debriefing conference with the Navy. That conference was not held until January 17 and it was only at that time that Trelldclean was apprised of the grounds that are now being asserted in this protest. Since Trelldclean had no knowledge of the specific basis of its protest until after the debriefing, we do not believe we would be justified in viewing this protest as untimely. R. H. Ritchey, B-205602, July 7, 1982, 82-2 CPD 28.

#### Proposal Evaluation

Trelldclean contends that the Navy's technical evaluation was defective in several respects. The Navy questioned the ability of the Trelldclean hull-cleaning system to determine in waters of limited visibility whether its machines were causing damage to the ship's hull. Trelldclean argues that, although the Navy reduced Trelldclean's score for this reason, Seaward's equipment poses the same problems, yet the Navy did not reduce Seaward's score. Secondly, Trelldclean contends that the Navy did not properly evaluate Trelldclean's response to the sample task assignment. Also, Trelldclean alleges that the Navy failed to conduct meaningful discussions concerning deficiencies in the personnel and facilities offered by Trelldclean and Trelldclean argues that, as a result, the Navy could not rely on those deficiencies to reduce Trelldclean's score in these areas. Finally, Trelldclean argues that Seaward should have received a lower score for corporate experience because of its safety record.

The determination of the relative merits of a proposal, particularly with respect to technical consideration, is primarily a matter of administrative discretion. Information Network Systems, B-208009, March 17, 1983, 83-1 CPD 272. Our function is not to evaluate proposals anew and make our own determinations as to their relative

merits. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. That function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37. In light of this, we have repeatedly held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that this will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Additionally, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. The fact that the protester does not agree with the agency's evaluation of its proposal does not in itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

With these general principles in mind, we will now examine Trelleclean's arguments.

#### Equipment

The RFP required that all "underwater hull-cleaning equipment be either diver operated or, if the equipment is remotely controlled, shall be monitored continuously underwater by a diver." Trelleclean proposed to use two different types of machines to accomplish the required work. The A-62 is the self-described "work horse" and is operated by remote control from a raft on the surface of the water. The AP42 and P22 machines were smaller diver-operated, hand-held brush cleaning units. These machines were to be used in areas not suitable for the larger and faster A-62 machine.

The TERP initially expressed concern that Trelleclean's remotely controlled A-62 machine did not meet the RFP requirement that the equipment be monitored continuously underwater by a diver. Trelleclean proposed to place a diver in the water at all times to monitor the A-62 with a remote on/off switch in the event any problems occurred. However, the Navy concluded that for safety reasons alone, the diver would have to be positioned several feet from the machine. The Navy had serious doubts as to whether the

diver-monitor would be able to see well enough in waters of limited visibility in order to start and stop the machine to avoid damage to hull protrusions or exposed equipment. Despite these reservations, the contracting officer decided to include Trelclean in the competitive range in order to afford the firm the opportunity to correct this deficiency.

Trelclean argues that the Navy in effect changed the specifications from either diver-operated or diver-monitored to only diver-operated machines. Trelclean points to several references in the administrative report which refer to the RFP as requiring diver-operated, hull-cleaning equipment and argues that those references demonstrate that the Navy changed the requirements. In addition, Trelclean contends that the equipment proposed by Seaward poses the same difficulties in waters of low visibility and that Seaward should have also been scored lower on this basis.

In our view, the Navy did not change the specification requirements. The RFP required that, if remotely controlled equipment was proposed, it shall be monitored continuously underwater. The TERP concluded that in waters of low visibility, a diver positioned several feet away could not, as a practical matter, monitor the machine. Although the TERP was concerned with whether the offered equipment conformed to the specifications, the record clearly shows that Trelclean was not scored lower for offering nonconforming machines, but rather received a lower score due to the deficiencies of the monitoring system that was proposed. The fact that Trelclean disagrees with the Navy's conclusions in this regard provides no basis to find that the Navy's evaluation was not in accord with the provision of the RFP.

The Navy also indicates that Seaward's equipment differed substantially from that proposed by Trelclean. Seaward's machines are all diver-operated with the diver lying across the machine close to the machine's brushes and the ship's hull. The Navy determined that the operator of the Seaward machine could more readily detect whether the machine was damaging the ship's hull and, on that basis, the Navy scored Seaward's proposal higher.

We find that the Navy had a reasonable basis to determine that there were fewer potential problems posed by the Seaward machines in waters of low visibility. Trelclean has not demonstrated this technical judgment to be unreasonable or arbitrary and, accordingly, we find no basis to object to the Navy's evaluation in this respect.

The Navy also indicates that it had problems with the smaller diver-operated AP42 machines proposed by Trelclean. Since these machines were described by Trelclean as diver-operated, the Navy was concerned that the diver could inadvertently manipulate the machine so that the brushes would not apply uniform pressure over the entire hull surface, causing spotty cleaning or actually gouging the hull. The Navy states that Trelclean never explained what controls existed on the machine which would prevent this from occurring and that, as a result, Trelclean's proposal did not receive the maximum score in this area.

Trelclean argues that the Navy's assumption concerning the AP42 is unwarranted since there is no information in its proposal from which the Navy could conclude that there could be such a problem with the AP42. To the contrary, Trelclean indicates that it stated in its proposal that its machine was comparable to that offered by Seaward, which, in the Navy's view, had adequate safeguards to protect against this problem. Consequently, Trelclean argues that the Navy had no basis to downgrade its proposal in this area and, if the Navy did not consider the two machines comparable, Trelclean should have been informed of this fact during discussions.

The Navy states that it did not consider the AP42 comparable to the equipment offered by Seaward. Although Trelclean disagrees with this conclusion and has submitted an affidavit in support of its position, we do not believe that the affidavit provides sufficient grounds to doubt the Navy's position. Informatics General Corporation, B-210709, June 30, 1983, 83-2 CPD 47. As the protester, Trelclean bears the burden of proving its case and that burden is not met where the only evidence is conflicting statements by the protester and the agency. Alchemy, Inc., B-207954, January 10, 1983, 83-1 CPD 8.

Furthermore, it is the offeror's responsibility to establish that what it proposes will meet the government's needs. Texas Medical Instruments, B-206405, August 10, 1982, 82-2 CPD 122. The RFP required that a description of

the equipment and the specific features of each item of equipment be submitted with the proposal. We cannot find the Navy's conclusions to be improper based on the information Trelleclean submitted with its proposal. See Foley Company, B-212378.7, February 13, 1984, 84-1 CPD 178.

With respect to Trelleclean's contention that the Navy should have informed Trelleclean of this deficiency, we note that the Navy is not obligated to point out every aspect of an offeror's proposal which received less than the maximum score. Louis Berger & Associates, Inc., B-208502, March 1, 1983, 83-1 CPD 195. Although the Navy argues that it did adequately inform Trelleclean of problems with its equipment, we need not decide this question. In view of the Navy's assessment that there were more serious deficiencies in other areas of Trelleclean's proposal and the negligible effect that the evaluation of the AP42 had on Trelleclean's overall score, we find that the Navy was not obligated to point out this deficiency in Trelleclean's proposal.

#### Sample Task Assignment

The RFP listed several sample task assignments and required offerors to specify their approach in performing hull-cleaning operations in those situations. The TERP awarded Trelleclean 7 out of 10 possible points in this area. The TERP concluded that Trelleclean's response to the sample task assignment was unduly simplified since it did not take into account the possibility that the remotely controlled A-62 unit could not be used in all circumstances. The Navy indicates that by failing to discuss contingent considerations, such as the extensive use of its slower cleaning AP42 units, Trelleclean failed to achieve a maximum score.

Trelleclean argues that there is no situation in which the A-62 unit could not be used. As a result, Trelleclean contends that the TERP's decision to reduce its score for this reason is arbitrary and capricious.

Initially, we point out that it is not the function of our Office to rescore proposals. We will not make independent judgments as to the numerical scores that should have been assigned. Blurton, Banks & Associates, Inc., B-206429, September 20, 1982, 82-2 CPD 238. Rather, we limit our review to an examination of whether the procuring agency's evaluation of proposals was reasonable. Id.

Based on the record, we cannot find that the Navy's evaluation lacked a reasonable basis. The TERP merely concluded that other offerors proposed more difficult conditions and more detailed solutions in comparison to the response submitted by Trelleclean. Even assuming that Trelleclean is correct in its assertion that the A-62 could always be used, which the Navy disputes, there is no basis in the record to conclude that Trelleclean's response warranted additional points. The record indicates that the scoring reflected differences in the difficulty of the assumptions and the detail of the solutions proposed by each firm. The fact that Trelleclean disagrees with the scoring does not establish that the evaluation had no reasonable basis. Deuel and Associates, Inc., B-212962, April 25, 1984, 84-1 CPD 477.

#### Adequacy of Discussions

Trelleclean argues that the Navy failed to conduct meaningful discussions concerning the deficiencies in its proposal relating to personnel. The RFP required that the offeror specifically detail the number and categories of personnel proposed. Resumes were required to be submitted and the offeror was required to identify the position that each person would occupy upon award. In addition, offerors were required to provide evidence of a legally binding commitment from the proposed personnel to be available for work under the contract within 3 weeks of award.

The Navy states that Trelleclean failed to comply with this requirement. In zone "A," Trelleclean provided names, resumes and evidence of availability for 19 of its 27 employees. In zone "B," Trelleclean identified only 10 of 28 proposed employees. The Navy determined that the personnel deficiency in zone "A" was not serious enough to warrant a request for clarification. However, with respect to zone "B," the Navy, by letter dated May 24, did request Trelleclean to clarify its proposal with respect to the experience levels and the availability of proposed personnel and proposed facilities. Trelleclean submitted additional information concerning its facilities, but did not supply any additional names or resumes.



Trellclean argues that it should have received notification of the personnel deficiency in zone "A." In addition, Trellclean contends that the statement in the May 24 letter was not sufficient to apprise Trellclean of the personnel deficiency in zone "B." Also, Trellclean argues that the Navy should have repeated the deficiency relating to personnel in the Navy's subsequent request for best and final offers. Trellclean indicates that the Navy reiterated its request for clarifications with respect to the equipment proposed, but did not repeat its request with respect to personnel. Trellclean argues that this action was misleading and that, as a result, the Navy failed to conduct meaningful discussions with Trellclean.

Meaningful discussions, either oral or written, are generally required in negotiated federal procurements. In these discussions, the contracting agency must furnish offerors information concerning the areas of deficiency in their proposals and give them an opportunity to revise their proposals. However, the context and extent of discussions needed to satisfy the requirement for meaningful discussions are matters primarily for determination by the contracting agency whose judgment will not be disturbed unless it is without a reasonable basis. Photonics Technology, Inc., B-200842, April 15, 1981, 81-1 CPD 288. We have stated that the acid test of whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. Information Network Systems, supra.

From the record, we think that the content and extent of discussions by the Navy were reasonable. During negotiations, the Navy discussed most, if not all, of the major inadequacies in Trellclean's initial proposal. We find that the May 24 statement regarding the inadequacy of the proposed personnel in zone "B" not only was sufficient to notify Trellclean of the personnel deficiency in zone "B," but also should have put Trellclean on notice to review its proposal with respect to zone "A" as well. Although Trellclean argues that it should have been specifically advised of the deficiency in zone "A," we note that we have rejected the notion that agencies are obligated to afford offerors all-encompassing negotiations.

Id. All that is necessary is that the agency lead offerors into areas of their proposal which require amplification. There is no requirement that an agency help an offeror bring his proposal up to the level of others by pointing out weaknesses resulting from the offeror's own lack of diligence or competence. 52 Comp. Gen. 870 (1973); 51 Comp. Gen. 621 (1972).

Also, the mere fact that the Navy did not again reiterate the need for additional information in the personnel area in its request for best and final offers does not demonstrate that the discussions were inadequate. The adequacy of discussions is judged by whether the offeror was informed of the deficiency and had an opportunity to revise its proposal, not by when those discussions occurred during the negotiation process. We find that the discussions in the present case met this standard.

Furthermore, in view of the specific RFP requirement concerning personnel, Trellclean's contention that it was misled by the Navy's actions is not persuasive. We have held that, where a solicitation specifically calls for certain information, the agency should not be required to remind the offeror to furnish the information with its final proposal. Value Engineering Company, B-182421, July 3, 1975, 75-2 CPD 10. Here, the RFP clearly required that names, resumes and evidence of commitment be submitted. In our view, the Navy reminded Trellclean of this requirement in its May 24 letter. Trellclean chose not to submit additional information concerning its proposed personnel and the Navy is not obligated to continue with successive rounds of discussions on the same point.

#### Seaward's Corporate Experience

The RFP indicated that, as part of a firm's corporate experience, its accidental damage and safety record would be evaluated. In 1980, Seaward experienced a diving-related fatality. Trellclean contends that the fatality was attributable to Seaward's failure to enforce its own safety procedures and has submitted documents provided by the Occupational Health and Safety Administration (OSHA) in support of its contention. Trellclean claims that the Navy should have downgraded Seaward's proposal for this reason.

Seaward acknowledges this incident. Seaward argues, however, that, judged by the overall number of diver-hours

logged by its divers, its safety record is the best of any diving company in the United States. The Navy indicates that Seaward disclosed the accidental death as well as the circumstances of that death. Although the Navy did not have the OSHA report, the Navy, based on the information provided and its own inquiry, determined that the accidental death was not due to any performance deficiencies on the part of Seaward and scored its proposal accordingly.

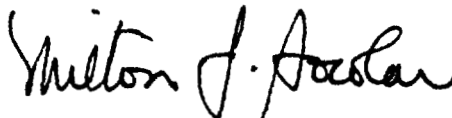
We cannot find the Navy's evaluation to be unreasonable. Even assuming that the death was attributable to Seaward's failure to comply with its own safety regulations, the Navy had sufficient basis to conclude that Seaward's overall accident and safety record was otherwise excellent. Again, it is not the function of this Office to rescore proposals and we cannot conclude that Seaward should necessarily have been given a lower score in this area.

#### Remaining Allegations

Trellclean has also alleged that the Navy failed to conduct a proper debriefing, failed to notify Trellclean of an earlier protest which had been filed concerning this procurement and that the Navy's actions were otherwise arbitrary and capricious.

With respect to the defective debriefing, we note that an agency is only required to furnish an offeror with reasons why its proposal was rejected. There is no requirement that an agency answer questions concerning the evaluation to an offeror's satisfaction. In any event, the debriefing concerns only an after-the-fact explanation of the selection, not the validity of the selection itself. The Farallones Institute Rural Center, B-211632, November 8, 1983, 83-2 CPD 540. Also, the fact that Trellclean was not advised of a prior protest provides no basis for disturbing the award of this contract. Trellclean was not prejudiced in any way in pursuing this protest with our Office by the Navy's failure to advise it of a prior protest on this procurement. Finally, we find that the record contains no evidence, other than the protester's bare allegations, that the Navy acted in bad faith and we have found that the Navy's actions in this procurement were neither arbitrary nor unreasonable.

Accordingly, Trellclean's protest and claim for proposal preparation costs are denied.

*for*   
Comptroller General  
of the United States